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| FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413 | | | EXAMINER PAK, JOHN D | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/529,318

Applicant(s)

BLIN ET AL.

Examiner

John Pak

Art Unit

1616

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 March 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 95-101 and 103-216 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 95-101 and 103-216 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF-08)
Paper No(s)/Mail Date 3/2/09, 3/13/09
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Applicant is advised that the previous examiner of this application is no longer employed by the USPTO. The undersigned Primary Examiner has recently been assigned to the application.

Claims 95-101 and 103-216 are pending in this application and they will presently be examined.

It is noted that only claims 100 and 216 lack the feature, "devoid of styrene" in the block polymer component. It is queried whether this was an oversight, and if so, correction is requested.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 95-101, 103-216 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

(1) All claims except 100 and 216 require a film formed from the composition to have a hardness of less than or equal to 35 seconds, the hardness of the film being measured "using a Persoz pendulum according to Standard NF-T-30-016."

The problem with such claim language is that the standard does not appear to be fixed. Various standards can undergo revisions, and it is not clear on the record at this time what the exact protocol of the claim-recited standard is. There is no date fixed for the standard and no other information that conveys a single specific protocol which

specifies important hardness-affecting variables such as film thickness, surface smoothness, temperature and relative humidity.

(2) For all claim-recited values of Hansen's solubility parameters, e.g. δ_h , δ_p , there is a superscript $\frac{1}{2}$. It is unclear whether this superscript denotes the square root of just the units or the square root of the numbers, too. For example in claim 99, is the number range of δ_h equal to 5.5 to 11 or square root of that range, i.e. 2.3 to 3.3?

(3) Throughout the claims, applicant uses non-standard Markush language to set forth list of alternatives. Standard, acceptable language is, "selected from the group consisting of ... and [last member]." For example in claim 105, "chosen from" is used without the "the group consisting of ... and ..." part. Instances of such claim language are too numerous to individually point out. Applicant is requested to review the claims and make all appropriate corrections. While this is not an exhaustive list, the following claims can be mentioned: 132, 135, 137-139, 142, 165, 168, 173, 175-178, 181, 182, 189, 193, 196.

(4) Claim 128 is confusing. At lines 7-8, R_3 can be t-butyl, "in which **at least one heteroatom ... is optionally inserted.**" This is confusing because "at least one" conveys non-optional insertion. Same problem is also noted at line 11 of the same claim, lines 10-11 of claim 138.

(5) Claim 128 is indefinite due to the use of "such as" language at lines 14 and 16. The phrase, "such as" could be limiting or exemplary so one skilled in the art would

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not be able to determine the full scope of the claims due to the different interpretations that are possible.

(6) Claim 129 lacks antecedent basis for "the tert-butyl group." The chain of claim dependencies does not show any prior recitation of a tert-butyl group.

(7) Claim 142 is confusing –

results, in all, from at least one monomer chosen from (meth)acrylic acid esters from at least one monomer chosen from (meth)acrylic acid, and their mixtures.

↑ Should "from" be replaced by "and?"

(8) Claim 171 lacks antecedent basis for "the carboxylic acid." Claim 161, the claim from which claim 171 depends, does recite an ester but an ester does not necessarily need a carboxylic acid to be an ester. Antecedent basis is therefore lacking.

(9) Claim 173 lacks antecedent basis for the same reason as above.

(10) Claim 182 recites the term, polar groups, in quotation marks. This is improper because it conveys some indefinite feature. The same effect can be achieved by reciting, "said polar group" (note the singular so singular verb should be used thereafter) instead.

(11) Claim 197 should recite "further comprising" because the wax component there has not been recited before.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 95-101 and 103-216 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mougín (US 2002/0115780, published 8/22/2002) in view of Marotta et al. (US 6,905,696), HCAPLUS abstract 1964:70247, Flick, and Philippe et al. (US 2002/0064539).

Mougín discloses in general the basic inventive concepts of applicant's presently claimed invention, albeit without several specific details. Non-stick cosmetic formulations with improved staying power and without user discomfort is disclosed (paragraph 7; claim 35). Cosmetic formulations contain block ethylenic copolymers comprising at least one rigid block having a $T_g \geq 20^\circ\text{C}$ derived from one or more ethylenic monomers and at least one flexible block having a $T_g < 20^\circ\text{C}$ derived from one or more ethylenic monomers (paragraphs 9-10)¹. The rigid blocks and flexible blocks are incompatible (paragraph 31; claim 18). Each block may consist of one or more different types of monomer, e.g. homopolymeric or random/alternating copolymeric (paragraph 38). Diblock, triblock, and polyblock copolymers are disclosed, wherein in

¹ Regarding T_g , it is noted that this document contains a publication error in paragraph 46. There, the reference T_g is published as 200°C , which is too high. All other disclosures are directed to T_g of 20°C . Review of the source document, application serial number 10/031,233, shows that the actual disclosure was 20°C in paragraph 46. The ordinary skilled artisan would have recognized the typographical error.

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the polyblock copolymer formula $B(AB)_n$ or $(AB)_nA$, each A and B independently represent identical or different polymers (paragraphs 40-44; claims 16-17). Rigid blocks A may represent 10-60 wt% of the final block copolymer and flexible blocks B may represent 40-90 wt% of the final block copolymer (Paragraph 45; claim 22). Rigid blocks A may be selected from the following:

- [0069] acrylic acid or methacrylic acid,
- [0070] C_{1-20} alkyl methacrylates containing a linear, branched, or cyclic chain, such as methyl methacrylate, ethyl methacrylate, propyl methacrylate, butyl methacrylate, isobutyl methacrylate, tert-butyl methacrylate and cyclohexyl methacrylate,
- [0071] C_{1-6} hydroxyalkyl methacrylates, such as 2-hydroxyethyl methacrylate and 2-hydroxypropyl methacrylate,
- [0072] certain vinyl esters such as vinyl acetate, vinyl propionate, vinyl benzoate and vinyl tert-butylbenzoate,
- [0073] heterocyclic monomers, such as N-vinylpyrrolidone, vinylcaprolactam, vinyl-N-(C_{1-6} alkyl)pyrroles, vinylloxazoles, vinylthiazoles, vinylpyrimidines and vinylimidazoles,
- [0074] (meth)acrylamide,
- [0075] certain aliphatic, cycloaliphatic or aromatic methacrylamides, such as tert-butylacrylamide and di(C_{1-4} alkyl)methacrylamides,

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- [0076] styrene,
- [0077] certain substituted styrenes,
- [0078] (meth)acrylic or vinyl monomers containing a fluoro or perfluoro group, such as perfluorooctylethyl methacrylate, or (meth)acrylamides containing a fluoro or perfluoro group,
- [0079] (meth)acrylic or vinyl silicone monomers, such as methacryloxypropyltris(trimethylsiloxy)silane, or silicone (meth)acrylamides,
- [0080] acrylic or vinyl monomers comprising an optionally neutralized or quaternized amine function, such as dimethylaminoethyl (meth)acrylate, dimethylaminoethylmethacrylamide, vinylamine, vinylpyridine and diallyldimethylammonium chloride,
- [0081] ethylenic carboxybetains or sulfobetaines obtained, for example, by quaternization of monomers containing ethylenic unsaturation comprising an amine function with sodium salts of a carboxylic acid containing a labile halogen (for example sodium chloroacetate) or with cyclic sulfones (for example propanesultone).

Flexible blocks B may be selected from the following:

- [0084] C_{1-20} alkyl acrylates containing a linear, branched or cyclic chain, such as methyl acrylate, ethyl acrylate, propyl acrylate, butyl acrylate, 2-ethylhexyl acrylate, isobutyl acrylate and tert-butyl acrylate,
- [0085] C_{6-20} aryl acrylates,
- [0086] C_{1-6} hydroxyalkyl acrylates, such as 2-hydroxyethyl acrylate and 2-hydroxypropyl acrylate,

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[0087] mono-, di- or poly(ethylene glycol) (meth)acrylates containing an optionally etherified hydroxyl end, such as the (meth)acrylates of ethylene glycol, of diethylene glycol or of polyethylene glycol,

[0088] certain aliphatic, cycloaliphatic or aromatic (meth)acrylamides, such as undecylacrylamide or N-octylacrylamide,

[0089] certain vinyl ethers such as vinyl isobutyl ether,

[0090] certain substituted styrenes,

[0091] acrylic or vinyl monomers containing a fluoro or perfluoro group, such as acrylic esters containing a perfluoroalkyl chain, for instance perfluorooctylethyl acrylate,

Broader disclosures with broader formulas are disclosed in paragraphs 46-66.

One of ordinary skill in the art knows the techniques to synthesize "a very wide variety of block copolymers 'to order' ... and thus allow an adjustment of the physicochemical properties according to the intended use (paragraphs 6, 16-29). Use of various organic solvents (paragraph 100; claim 24) and fatty phase including oils, gums and/or waxes (paragraphs 102, 116-120; claim 25) is disclosed. Oils can be volatile oils or non-volatile oils (paragraph 115 and also 104-114). Inclusion of **plasticizers** and additional film-forming polymers are disclosed (claim 26, paragraph 121). Pigments (paragraph 123) and other cosmetic additive ingredients are disclosed (paragraphs 98, 124-128; claim 28). "[A]ny form usually encountered in cosmetics" is disclosed, including lotion, suspension, dispersion, solution, powder, solid or anhydrous paste (paragraph 130; claim 29). **Makeup** compositions for the face, the body or integuments, and **lipstick**

products are disclosed (paragraph 131; claim 32). The difference between the T_g of the rigid blocks and flexible blocks can be at least 20°C or at least 50 °C (paragraph 39; claim 20). The cosmetic composition may contain 1-99 wt% of the block copolymer (paragraph 101; claim 23).

Mougin further discloses (paragraph 129):

Needless to say, a person skilled in the art will take care to select the optional additional compounds such that the advantageous properties of the composition according to the invention are not, or are virtually not, adversely affected by the envisaged addition.

Marotta et al. (US 6,905,696) disclose the use of **sucrose acetate isobutyrate** in various makeup products such as lipstick, lipgloss, and mascara (column 2, lines 49-52; column 6, lines 12-20). Sucrose acetate isobutyrate is a highly viscous material, the structure of which has two acetic acid ester moieties and six isobutyric acid moieties (column 2, lines 45-46 and 50-52). Sucrose acetate isobutyrate functions to align other components to keratinous surfaces and has the desirable quality of good adhesion to substrates such as the skin and hair (column 3, lines 3-5). 0.2 to 20 wt% amount is disclosed (column 3, lines 7-9).

HCAPLUS abstract 1964:70247 is cited to establish that sucrose acetate isobutyrate, phthalates (dimethyl, diallyl, dioctyl, dibutyl, octyl decyl), butyl tartrates, and tricresyl phosphate have been known for their use as **plasticizers** since 1961.

Flick is cited to establish that phthalates (dibutyl, diethyl, dimethyl, dioctyl), dioctyl terephthalate, trioctyl trimellitate, 2,2,4-trimethyl-1,2-pentanediol diisobutyrate, and

triacetin (glyceryl triacetate) are known plasticizers for use as cosmetic additives (page 266).

The patent publication by Philippe et al. (US 2002/0064539) is cited to establish that benzyl benzoate, butyl acetyl ricinoleate, triethyl citrate, **tributyl acetyl citrate** and dibutyl phthalate are known plasticizers for use as cosmetic additives (paragraph 110).

There are many differences of specific nature between the primary reference by Mougin and the claimed invention, but as set forth above and further discussed below, those differences would have fairly been within the skill of the ordinary skilled artisan at the time the invention was made.

Mougin does not expressly disclose an intermediate, random copolymer block in combination with the first and second blocks in the same language as the instant claims. However, Mougin discloses an extensive teaching of polyblock copolymers derived from the same or substantially similar monomeric units. Mougin's rigid block(s) have a $T_g \geq 20^\circ\text{C}$ derived from one or more ethylenic monomers and flexible block(s) having a $T_g < 20^\circ\text{C}$ derived from one or more ethylenic monomers, wherein the difference between the T_g of the rigid block(s) and flexible block(s) is at least 20°C . Therefore, the ordinary skilled artisan in this field would have been motivated to synthesize "to order" suitable block ethylenic copolymers for non-stick, long-lasting and comfortable cosmetic products such as makeup compositions and lipstick compositions, as claimed or readable on the instant application claims, because intermediate block(s) would have been fairly suggested by, inter alia, Mougin's polyblock and T_g disclosures.

Applicant's claim 111 requires at least one block polymer to comprise at least one first block having T_g of between 20 and 40°C and at least one second block having a $T_g \leq 20^\circ\text{C}$ or $\geq 40^\circ\text{C}$. Such first block is fairly suggested by Mougins's teachings, which encompass various T_g combinations as claimed in this application claims, and such second block is expressly disclosed by Mougins.

Further selection of specific monomers, proportions of blocks, and weight percentages as claimed would have been within the skill of the ordinary skilled artisan from similar teachings by Mougins, *supra*.

Applicant's claims 104, 146 and 147 specify polydispersity index (I) of at least one block polymer. $I > 2$, $I \geq 2.5$ and I between 2.8 and 6 are claimed. Keeping in mind that this index is a ratio of conventionally obtained M_n and M_w values, wherein a ratio such as greater than 2 or more is indicative of smaller number of lower molecular weight polymers, such index values would have been suggested by the motivation to synthesize predictably similar batches of target copolymers with desired properties.

Applicant's claims 148-151 recite specific M_w or M_n values for the at least one block polymer. While Mougins does not expressly disclose such molecular weight features, such molecular weights would have been obvious and necessarily obtained from the synthesis of the copolymers using substantially same or similar monomeric units for polyblocks having substantially same or similar T_g features, in addition to the final property of providing non-stick, long-lasting and comfortable cosmetic products such as makeup compositions and lipstick compositions, as claimed or readable herein.

Applicant's plasticizers are described in the instant claims as allowing the cosmetic composition to form a film having a hardness of less than or equal to 35 seconds, the hardness of the film being measured using a Persoz pendulum according to Standard NF-T-30-016. Independent claims 100 and 216 and several dependent claims further require certain Hansen's solubility parameter features or molecular weight features. It is the Examiner's position that such features are necessary properties of the plasticizers, i.e. selection of the plasticizer would necessarily bring with it such Hansen's solubility parameters or molecular weights. As to the selection of such plasticizers, Mougin specifically teaches the incorporation of plasticizers and the secondary references are evidence that the claim-recited plasticizers are well-known plasticizers in the formulation of cosmetic compositions.

Given that the function of a plasticizer is to impart flexibility and pliability, one having ordinary skill in the art of formulating Mougin's non-stick, long-lasting and comfortable cosmetic products such as makeup compositions and lipstick compositions would have been motivated to incorporate suitable, well-known cosmetic plasticizers such as those encompassed by the instant claims.

Claim 184 is evidence that the plasticizer amount can be very low, including 0.1 wt%. One having ordinary skill in the art would have been motivated to incorporate the plasticizers in suitable amounts, amounts which would overlap with those claimed by applicant, because such amounts would be needed to provide the ultimate composition having the properties taught by Mougin and such amounts are typically used in

cosmetic formulations (e.g., Marotta et al., column 3, lines 7-9; Philippe et al., paragraph 110). Weight ratio of block polymer to plasticizer would have been obviously adjusted by the ordinary skilled artisan to arrive at the appropriate plasticizer need in view of the final product application. Given Mougin's weight amount disclosure for the block polymer and conventional plasticizer amount usage in cosmetic formulations, the claimed ratio range would have been obvious.

Claims 206-213 are directed to a multi-compartment kit comprising the previously discussed cosmetic composition and a container delimited at least one compartment, the container being closed by a closing element. Various container and closing element features are set forth in the dependent claims, but such product design features are typically known and obvious for consumer appeal and ease of repeated use. Pressurized composition represents typical and obvious cosmetic product alternative such as an aerosol product. All such claim embodiments would have been obvious for these reasons.

Claims 214-216 are directed to processes for applying or methods for producing deposited layers of the composition. Because Mougin's teachings are directed to applying the composition to keratinous substances such as the skin and lip, the claimed processes would have been plainly obvious.

Claims 100 and 216 do not specifically exclude styrene from the ethylenic polymer, whereas all other claims do exclude styrene. Mougin teaches polyblock

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ethylenic copolymers that can be derived from non-styrene or styrene ethylenic monomers, as discussed above.

Lastly, in view of the extensive teachings of Mougin, any specific claimed variations not expressly discussed herein would have been well within the skill of the ordinary skilled artisan. The ultimate cosmetic products taught by Mougin, with their long-lasting, non-stick and comfortable properties, taken with the sufficient number of defined adjustable parameters, would have led the ordinary skilled artisan to arrive at the instantly invention to the full extent claimed.

Therefore, the claimed invention, as a whole, would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made, because every element of the invention and the claimed invention as a whole have been fairly disclosed or suggested by the teachings of the cited references.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 95-101, 103-204, and 206-216 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 78-167 of copending Application No. 10/528,699 in view of Marotta et al. (US 6,905,696), HCAPLUS abstract 1964:70247, Flick, and Philippe et al. (US 2002/0064539).

Although the conflicting claims are not identical, they are not patentably distinct from each other because of the following reasons.

Copending claims set forth a nail varnish composition comprising, in a cosmetically acceptable organic solvent medium, at least one film-forming linear ethylenic block polymer, including first and second blocks that are linked together via an intermediate segment comprising at least one constituent monomer of the first block and at least one constituent monomer of the second block. See claims 78 and 83. The same T_g features as in the instant claims are set forth (claims 88-89). Plasticizers are included (claims 154-155). See all of the claims for full details.

Teachings of the secondary references by Marotta et al., HCAPLUS abstract 1964:70247, Flick, and Philippe et al. have been fully set forth in the previous ground of rejection, and the discussion there is incorporated herein by reference. In short, the

secondary references establish that the plasticizers of the instant claims are well-known plasticizers, which are known to be used in cosmetic formulations and products.

One having ordinary skill in the art would have recognized from the copending claims that the instant invention is an obvious variation thereof because the claimed description of the plasticizer in terms of its hardness or Hansen's solubility parameters is merely a recitation of necessary properties of the well-known cosmetic plasticizers, the inclusion of which is explicitly claimed in the copending claims.

Instant claims 206-213 are directed to a multi-compartment kit comprising the previously discussed cosmetic composition and a container delimited at least one compartment, the container being closed by a closing element. Various container and closing element features are set forth in the dependent claims, but such product design features are typically known and obvious for consumer appeal and ease of repeated use. Pressurized composition represents typical and obvious cosmetic product alternative such as an aerosol product. All such claim embodiments would have been obvious for these reasons. See also copending claims 160-166, which are directed to a "cosmetic assembly" comprising a container delimiting at least one compartment, wherein the container is closed by a closing member and the inventive composition.

Instant claims 214-216 are directed to processes for applying or methods for producing deposited layers of the composition. Because copending claims are directed to a nail varnish, the claimed processes would have been plainly obvious.

Instant claims 100 and 216 do not specifically exclude styrene from the ethylenic polymer, whereas all other claims do exclude styrene. It is noted that copending independent claim 78 does not exclude styrene. Exclusion of styrene is noted in copending claim 80, which conveys possible inclusion in copending claim 78.

Lastly, in view of the extensive teachings of the copending claims, any specific claimed variations not expressly discussed herein would have been well within the skill of the ordinary skilled artisan. The ultimate cosmetic product set forth by the copending claims, taken with the sufficient number of defined adjustable parameters, would have led the ordinary skilled artisan to arrive at the instantly invention to the full extent claimed.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 95-101 and 103-216 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 85-184 of copending Application No. 10/528,835 in view of Marotta et al. (US 6,905,696), HCAPLUS abstract 1964:70247, Flick, and Philippe et al. (US 2002/0064539).

Although the conflicting claims are not identical, they are not patentably distinct from each other because of the following reasons.

Copending claims set forth cosmetic compositions (lip, eye, makeup, nail) comprising, in a cosmetically acceptable organic solvent medium, at least one non-

elastomeric film-forming linear ethylenic block polymer, including first and second blocks that are linked together via an intermediate segment comprising at least one constituent monomer of the first block and at least one constituent monomer of the second block.

See claims 85-90. The same T_g features as in the instant claims are set forth (claims 93-95). See all of the claims for full details.

Teachings of the secondary references by Marotta et al., HCAPLUS abstract 1964:70247, Flick, and Philippe et al. have been fully set forth in a previous ground of rejection, and the discussion there is incorporated herein by reference. In short, the secondary references establish that the plasticizers of the instant claims are well-known plasticizers, which are known to be used in cosmetic formulations and products.

Incorporation of a plasticizer in the cosmetic compositions of the copending claims would have been obvious because the function of a plasticizer is to impart flexibility and pliability. Cosmetic compositions and products such as makeup and lipstick compositions and products would benefit from such properties because they would in turn make its application more comfortable to the user.

One having ordinary skill in the art would have recognized from the copending claims that the instant invention is an obvious variation thereof because incorporation of a plasticizer is fairly suggested and the claimed description of the plasticizer in terms of its hardness or Hansen's solubility parameters is merely a recitation of necessary properties of the well-known cosmetic plasticizers, the inclusion of which is fairly suggested by the copending claims.

Instant claims 206-213 are directed to a multi-compartment kit comprising the previously discussed cosmetic composition and a container delimited at least one compartment, the container being closed by a closing element. Various container and closing element features are set forth in the dependent claims, but such product design features are typically known and obvious for consumer appeal and ease of repeated use. Pressurized composition represents typical and obvious cosmetic product alternative such as an aerosol product. All such claim embodiments would have been obvious for these reasons. See also copending claims 176-182, which are directed to a similar cosmetic kit.

Instant claims 214-216 are directed to processes for applying or methods for producing deposited layers of the composition. Because copending claims are directed to various cosmetic compositions such as compositions for the lip, eye, makeup, the claimed processes would have been plainly obvious.

Lastly, in view of the extensive teachings of the copending claims, any specific claimed variations not expressly discussed herein would have been well within the skill of the ordinary skilled artisan. The ultimate cosmetic product set forth by the copending claims, taken with the sufficient number of defined adjustable parameters, would have led the ordinary skilled artisan to arrive at the instantly invention to the full extent claimed.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 100 and 216 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 80-83, 86-87, 90-140 and 142-176 of copending Application No. 10/529,218 in view of Marotta et al., HCAPLUS abstract 1964:70247, Flick, and Philippe et al. Although the conflicting claims are not identical, they are not patentably distinct from each other because of the following reasons.

Copending claims set forth a liquid cosmetic composition comprising, in a cosmetically acceptable organic liquid medium, at least one non-elastomeric film-forming linear block ethylenic polymer, including first and second blocks that are linked together via an intermediate segment comprising at least one constituent monomer of the first block and at least one constituent monomer of the second block. See claims 80-81. The same T_g features as in the instant claims are set forth (claims 90-129). See all of the claims for full details.

Teachings of the secondary references by Marotta et al., HCAPLUS abstract 1964:70247, Flick, and Philippe et al. have been fully set forth in the previous ground of rejection, and the discussion there is incorporated herein by reference. In short, the secondary references establish that the plasticizers of the instant claims are well-known plasticizers, which are known to be used in cosmetic formulations and products.

Incorporation of a plasticizer in the cosmetic compositions of the copending claims would have been obvious because the function of a plasticizer is to impart flexibility and pliability. Liquid cosmetic compositions and products would benefit from

such properties because they would in turn make its application more comfortable to the user upon drying.

One having ordinary skill in the art would have recognized from the copending claims that the instant invention is an obvious variation thereof because incorporation of a plasticizer is fairly suggested and the claimed description of the plasticizer in terms of its Hansen's solubility parameters is merely a recitation of necessary properties of the well-known cosmetic plasticizers, the inclusion of which is fairly suggested by the copending claims.

Instant claim 216 is directed to processes for producing deposited layers of the composition. Because copending claims are directed to liquid cosmetic compositions, the claimed processes would have been plainly obvious, particularly upon drying.

Lastly, in view of the extensive teachings of the copending claims, any specific claimed variations not expressly discussed herein would have been well within the skill of the ordinary skilled artisan. The ultimate makeup composition or product set forth by the copending claims, taken with the sufficient number of defined adjustable parameters, would have led the ordinary skilled artisan to arrive at the instantly invention to the full extent claimed.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 95-101, 103-204 and 206-216 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 77-80, 83-94, 97-107, 109-161, 165-174 of copending Application No. 10/529,266 in view of Marotta et al. (US 6,905,696), HCAPLUS abstract 1964:70247, Flick, and Philippe et al. (US 2002/0064539).

Although the conflicting claims are not identical, they are not patentably distinct from each other because of the following reasons.

Copending claims set forth makeup compositions comprising, in a cosmetically acceptable organic liquid medium, at least one film-forming linear ethylenic block polymer, including first and second blocks that are linked together via an intermediate segment comprising at least one constituent monomer of the first block and at least one constituent monomer of the second block. See claim 77. The same T_g features as in the instant claims are set forth (claims 77, 83, 84). See all of the claims for full details.

Teachings of the secondary references by Marotta et al., HCAPLUS abstract 1964:70247, Flick, and Philippe et al. have been fully set forth in a previous ground of rejection, and the discussion there is incorporated herein by reference. In short, the secondary references establish that the plasticizers of the instant claims are well-known plasticizers, which are known to be used in cosmetic formulations and products.

Incorporation of a plasticizer in the cosmetic compositions of the copending claims would have been obvious because the function of a plasticizer is to impart flexibility and pliability. Makeup compositions and products would benefit from such

properties because they would in turn make its application more comfortable to the user.

One having ordinary skill in the art would have recognized from the copending claims that the instant invention is an obvious variation thereof because incorporation of a plasticizer is fairly suggested and the claimed description of the plasticizer in terms of its hardness or Hansen's solubility parameters is merely a recitation of necessary properties of the well-known cosmetic plasticizers, the inclusion of which is fairly suggested by the copending claims.

Instant claims 206-213 are directed to a multi-compartment kit comprising the previously discussed cosmetic composition and a container delimited at least one compartment, the container being closed by a closing element. Various container and closing element features are set forth in the dependent claims, but such product design features are typically known and obvious for consumer appeal and ease of repeated use. Pressurized composition represents typical and obvious cosmetic product alternative such as an aerosol product. All such claim embodiments would have been obvious for these reasons. See also copending claims 165-173, which are directed to similar cosmetic kits.

Instant claims 214-216 are directed to processes for applying or methods for producing deposited layers of the composition. Because copending claims are directed to makeup compositions, the claimed processes would have been plainly obvious.

Lastly, in view of the extensive teachings of the copending claims, any specific claimed variations not expressly discussed herein would have been well within the skill of the ordinary skilled artisan. The ultimate makeup composition or product set forth by the copending claims, taken with the sufficient number of defined adjustable parameters, would have led the ordinary skilled artisan to arrive at the instantly invention to the full extent claimed.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 95-101, 103-204, and 206-216 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 87-189 of copending Application No. 10/529,267 in view of Marotta et al. (US 6,905,696), HCAPLUS abstract 1964:70247, Flick, and Philippe et al. (US 2002/0064539).

Although the conflicting claims are not identical, they are not patentably distinct from each other because of the following reasons.

Copending claims set forth compositions for coating keratin fibers comprising, in a cosmetically acceptable organic liquid medium, at least one film-forming linear ethylenic block polymer, including first and second blocks that are linked together via an intermediate segment comprising at least one constituent monomer of the first block and at least one constituent monomer of the second block. See claims 87 and 90. The

same T_g features as in the instant claims are set forth (claims 92, 93, 96, 99-104).

Plasticizers are included (claim 173). See all of the claims for full details.

Teachings of the secondary references by Marotta et al., HCAPLUS abstract 1964:70247, Flick, and Philippe et al. have been fully set forth in a previous ground of rejection, and the discussion there is incorporated herein by reference. In short, the secondary references establish that the plasticizers of the instant claims are well-known plasticizers, which are known to be used in cosmetic formulations and products.

One having ordinary skill in the art would have recognized from the copending claims that the instant invention is an obvious variation thereof because the claimed description of the plasticizer in terms of its hardness or Hansen's solubility parameters is merely a recitation of necessary properties of the well-known cosmetic plasticizers, the inclusion of which is explicitly claimed in the copending claims.

Instant claims 206-213 are directed to a multi-compartment kit comprising the previously discussed cosmetic composition and a container delimited at least one compartment, the container being closed by a closing element. Various container and closing element features are set forth in the dependent claims, but such product design features are typically known and obvious for consumer appeal and ease of repeated use. Pressurized composition represents typical and obvious cosmetic product alternative such as an aerosol product. All such claim embodiments would have been obvious for these reasons. See also copending claims 181-189, which are directed to a

“cosmetic assembly” comprising a container delimiting at least one compartment, wherein the container is closed by a closing member and the inventive composition.

Instant claims 214-216 are directed to processes for applying or methods for producing deposited layers of the composition. Because copending claims are directed to compositions for coating keratin fibers, the claimed processes would have been plainly obvious.

Instant claims 100 and 216 do not specifically exclude styrene from the ethylenic polymer, whereas all other claims do exclude styrene. It is noted that copending independent claim 87 does not exclude styrene. Exclusion of styrene is noted in copending claim 88, which conveys possible inclusion in copending claim 87.

Lastly, in view of the extensive teachings of the copending claims, any specific claimed variations not expressly discussed herein would have been well within the skill of the ordinary skilled artisan. The ultimate cosmetic product set forth by the copending claims, taken with the sufficient number of defined adjustable parameters, would have led the ordinary skilled artisan to arrive at the instantly invention to the full extent claimed.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 95-101, 103-204, and 206-216 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-92

of copending Application No. 10/585,817 in view of Marotta et al. (US 6,905,696), HCAPLUS abstract 1964:70247, Flick, and Philippe et al. (US 2002/0064539).

Although the conflicting claims are not identical, they are not patentably distinct from each other because of the following reasons.

Copending claims set forth compositions for coating keratin fibers comprising, in a cosmetically acceptable organic liquid medium, at least one film-forming linear ethylenic block polymer, including first and second blocks that are linked together via an intermediate segment comprising at least one constituent monomer of the first block and at least one constituent monomer of the second block. See claims 1-5. The same T_g features as in the instant claims are set forth (claims 1, 5-6, 8-9, 12-13). Plasticizers are included (claim 80). See all of the claims for full details.

Teachings of the secondary references by Marotta et al., HCAPLUS abstract 1964:70247, Flick, and Philippe et al. have been fully set forth in a previous ground of rejection, and the discussion there is incorporated herein by reference. In short, the secondary references establish that the plasticizers of the instant claims are well-known plasticizers, which are known to be used in cosmetic formulations and products.

One having ordinary skill in the art would have recognized from the copending claims that the instant invention is an obvious variation thereof because the claimed description of the plasticizer in terms of its hardness or Hansen's solubility parameters is merely a recitation of necessary properties of the well-known cosmetic plasticizers, the inclusion of which is explicitly claimed in the copending claims.

Instant claims 206-213 are directed to a multi-compartment kit comprising the previously discussed cosmetic composition and a container delimited at least one compartment, the container being closed by a closing element. Various container and closing element features are set forth in the dependent claims, but such product design features are typically known and obvious for consumer appeal and ease of repeated use. Pressurized composition represents typical and obvious cosmetic product alternative such as an aerosol product. All such claim embodiments would have been obvious for these reasons. See also copending claims 86-92, which are directed to a "cosmetic assembly" comprising a container delimiting at least one compartment, wherein the container is closed by a closing member and the inventive composition.

Instant claims 214-216 are directed to processes for applying or methods for producing deposited layers of the composition. Because copending claims are directed to compositions for coating keratin fibers, the claimed processes would have been plainly obvious.

Instant claims 100 and 216 do not specifically exclude styrene from the ethylenic polymer, whereas all other claims do exclude styrene. It is noted that copending independent claim 1 does not exclude styrene. Exclusion of styrene is noted in copending claim 2, which conveys possible inclusion in copending claim 1.

Lastly, in view of the extensive teachings of the copending claims, any specific claimed variations not expressly discussed herein would have been well within the skill of the ordinary skilled artisan. The ultimate cosmetic product set forth by the copending

claims, taken with the sufficient number of defined adjustable parameters, would have led the ordinary skilled artisan to arrive at the instantly invention to the full extent claimed.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 95-101, 103-204, and 206-216 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-88 of copending Application No. 10/585,818 in view of Marotta et al. (US 6,905,696), HCAPLUS abstract 1964:70247, Flick, and Philippe et al. (US 2002/0064539).

Although the conflicting claims are not identical, they are not patentably distinct from each other because of the following reasons.

Copending claims set forth compositions for coating keratin fibers comprising, in a cosmetically acceptable organic liquid medium, at least one film-forming linear ethylenic block polymer, including first and second blocks that are linked together via an intermediate segment comprising at least one constituent monomer of the first block and at least one constituent monomer of the second block. See claims 1-5. The same T_g features as in the instant claims are set forth (claims 1, 6-30). Plasticizers are included (claim 76). See all of the claims for full details.

Teachings of the secondary references by Marotta et al., HCAPLUS abstract 1964:70247, Flick, and Philippe et al. have been fully set forth in a previous ground of

rejection, and the discussion there is incorporated herein by reference. In short, the secondary references establish that the plasticizers of the instant claims are well-known plasticizers, which are known to be used in cosmetic formulations and products.

One having ordinary skill in the art would have recognized from the copending claims that the instant invention is an obvious variation thereof because the claimed description of the plasticizer in terms of its hardness or Hansen's solubility parameters is merely a recitation of necessary properties of the well-known cosmetic plasticizers, the inclusion of which is explicitly claimed in the copending claims.

Instant claims 206-213 are directed to a multi-compartment kit comprising the previously discussed cosmetic composition and a container delimited at least one compartment, the container being closed by a closing element. Various container and closing element features are set forth in the dependent claims, but such product design features are typically known and obvious for consumer appeal and ease of repeated use. Pressurized composition represents typical and obvious cosmetic product alternative such as an aerosol product. All such claim embodiments would have been obvious for these reasons. See also copending claims 82-88, which are directed to a "cosmetic assembly" comprising a container delimiting at least one compartment, wherein the container is closed by a closing member and the inventive composition.

Instant claims 214-216 are directed to processes for applying or methods for producing deposited layers of the composition. Because copending claims are directed

to compositions for coating keratin fibers, the claimed processes would have been plainly obvious.

Instant claims 100 and 216 do not specifically exclude styrene from the ethylenic polymer, whereas all other claims do exclude styrene. It is noted that copending independent claim 1 does not exclude styrene. Exclusion of styrene is noted in copending claim 2, which conveys possible inclusion in copending claim 1.

Lastly, in view of the extensive teachings of the copending claims, any specific claimed variations not expressly discussed herein would have been well within the skill of the ordinary skilled artisan. The ultimate cosmetic product set forth by the copending claims, taken with the sufficient number of defined adjustable parameters, would have led the ordinary skilled artisan to arrive at the instantly invention to the full extent claimed.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 95-101 and 103-216 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-5, 8-9 and 12-140 of copending Application No. 10/949,448 in view of Marotta et al. (US 6,905,696), HCAPLUS abstract 1964:70247, Flick, and Philippe et al. (US 2002/0064539).

Although the conflicting claims are not identical, they are not patentably distinct from each other because of the following reasons.

Copending claims set forth cosmetic product (for lip, eye, makeup, nail, etc.) comprising, in a cosmetically acceptable organic solvent medium, at least one non-film-forming linear ethylenic block polymer, including first and second blocks that are linked together via an intermediate segment comprising at least one constituent monomer of the first block and at least one constituent monomer of the second block. See claims 1, 8, 133. The same T_g features as in the instant claims are set forth (claims 1, 12-68). See all of the claims for full details.

Teachings of the secondary references by Marotta et al., HCAPLUS abstract 1964:70247, Flick, and Philippe et al. have been fully set forth in a previous ground of rejection, and the discussion there is incorporated herein by reference. In short, the secondary references establish that the plasticizers of the instant claims are well-known plasticizers, which are known to be used in cosmetic formulations and products.

Incorporation of a plasticizer in the cosmetic compositions of the copending claims would have been obvious because the function of a plasticizer is to impart flexibility and pliability. Cosmetic products such as makeup and lipstick would benefit from such properties because they would in turn make its application more comfortable to the user.

One having ordinary skill in the art would have recognized from the copending claims that the instant invention is an obvious variation thereof because incorporation of

a plasticizer is fairly suggested and the claimed description of the plasticizer in terms of its hardness or Hansen's solubility parameters is merely a recitation of necessary properties of the well-known cosmetic plasticizers, the inclusion of which is fairly suggested by the copending claims.

Instant claims 206-213 are directed to a multi-compartment kit comprising the previously discussed cosmetic composition and a container delimited at least one compartment, the container being closed by a closing element. Various container and closing element features are set forth in the dependent claims, but such product design features are typically known and obvious for consumer appeal and ease of repeated use. Pressurized composition represents typical and obvious cosmetic product alternative such as an aerosol product. All such claim embodiments would have been obvious for these reasons. See also copending claims 137-139, which are directed to a similar makeup kit.

Instant claims 214-216 are directed to processes for applying or methods for producing deposited layers of the composition. Because copending claims are directed to various cosmetic compositions such as compositions for the lip, eye, makeup, the claimed processes would have been plainly obvious.

Lastly, in view of the extensive teachings of the copending claims, any specific claimed variations not expressly discussed herein would have been well within the skill of the ordinary skilled artisan. The ultimate cosmetic product set forth by the copending claims, taken with the sufficient number of defined adjustable parameters, would have

led the ordinary skilled artisan to arrive at the instantly invention to the full extent claimed.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Previous obviousness type double patenting ground of rejection (provisional) over 10/528,265 will not be repeated herein because the instant invention does not appear to be an obvious variation of the masking mechanism for a film forming apparatus invention.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to JOHN PAK whose telephone number is **(571)272-0620**. The Examiner can normally be reached on Monday to Friday from 8 AM to 4:30 PM.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's SPE, Johann Richter, can be reached on **(571)272-0646**.

The fax phone number for the organization where this application or proceeding is assigned is **(571)273-8300**.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571)272-1600.

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/John Pak/
Primary Examiner, Art Unit 1616